

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:20cr183

vs.

TY GERARD GARBIN,

Defendant.

Before:

THE HONORABLE ROBERT J. JONKER,
U.S. District Judge
Grand Rapids, Michigan
Wednesday, August 25, 2021
Sentencing Proceedings

APPEARANCES:

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On behalf of the Plaintiff;

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REPORTED BY: MR. PAUL G. BRANDELL, CSR-4552, RPR, CRR

08/25/2021

(Proceedings, 4:00 p.m.)

THE CLERK: The United States District Court for the Western District of Michigan is now in session. The Honorable Robert J. Jonker, chief judge, presiding.

THE COURT: All right. We're here on the case of the United States against Ty Garbin. It's the time set for sentencing, and we'll start with appearances. If you are in the front and have a speaking role today I certainly don't expect you to wear masks, and so let's begin with appearances and we'll go from there.

MR. KESSLER: Good afternoon, Your Honor. Nils Kessler and Austin Hakes for the United States.

THE COURT: All right.

MR. SPRINGSTEAD: Good afternoon, Your Honor. Gary Springstead and Mark Satawa on behalf of Ty Garbin. Seated behind us is Nicole Springstead.

THE COURT: Okay. Very good. Welcome everyone. Let me make sure I have received everything that the parties wanted me to see in advance of the sentencing. Of course, we have the presentence report from our probation officer. I do have a Government sentencing memorandum and its motion for downward departure. I have a defense sentencing memo and a motion and brief on the variance issues. There are exhibits as well to those items. And then I have a proposed preliminary order of

1 forfeiture that I think tracks what's in the plea agreement,
2 but I did want to confirm that before we go too far. I think
3 that's it. Anything else I should have from the Government in
4 written form?

5 MR. KESSLER: No, Your Honor.

6 THE COURT: Defense?

7 MR. SPRINGSTEAD: No, Your Honor.

8 THE COURT: Okay. On the preliminary order of
9 forfeiture, Mr. Springstead or Mr. Satawa, is the Defense
10 satisfied that that's accurate and should enter.

11 MR. SATAWA: It is, Your Honor. Thank you.

12 THE COURT: I'll go ahead and do that as part of the
13 filing today.

14 Moving to the plea agreement. This case did come with
15 a plea agreement. It did call for Mr. Garbin's plea to the
16 only charge against him in the indictment, but included also a
17 promise not to bring other charges. So it does need the Courts
18 imprimatur, and I am satisfied under 6B1.2 of the guidelines
19 and related authority that it's an appropriate resolution of
20 the case and honors the purposes of sentencing, so I am
21 accepting that.

22 Moving to the guidelines, then, is the next issue.
23 The base level here is 32 based on the offense of conviction.
24 Six levels are added under Chapter 3 because the victim here is
25 an official victim, Governor Gretchen Whitmer. That takes us

1 to 38. I do think acceptance of responsibility is appropriate.
2 I am granting those two points, and is the Government moving
3 for the third?

4 MR. KESSLER: We are, Your Honor.

5 THE COURT: I'll grant that, taking us to level 35.
6 The criminal history category is I, so the guideline range off
7 the chart before considerations of departure and variance would
8 be 168 to 210 months. Any guideline objections from the
9 Government?

10 MR. KESSLER: No, Your Honor.

11 THE COURT: Or the Defense?

12 MR. SATAWA: No, Your Honor.

13 THE COURT: Okay. Then let's get to the meat of the
14 discussion, which is starting with that guideline range what's
15 sufficient but not greater than necessary all things considered
16 to appropriately reflect the § 3553 factors and other
17 sentencing considerations? I usually start that with the
18 Defense, and I plan to do that here, too. So either
19 Mr. Satawa, Mr. Springstead, whoever is going to speak I'll
20 invite you. Why don't you take the podium so you are closer to
21 a microphone that will allow everybody to hear clearly. Thank
22 you.

23 MR. KESSLER: Your Honor, were you planning to address
24 the 5K motion later?

25 THE COURT: Yes.

1 MR. KESSLER: I only ask because it does affect the
2 guidelines.

3 THE COURT: In fact, as far as the Defense is
4 concerned, too, if you want to make your comments now on the
5 departure motion feel free. I am just looking for the
6 sentencing package from each side and then I'll make my
7 rulings.

8 MR. SATAWA: Your Honor, to be honest, Mr. Springstead
9 and I -- division of labor. Mr. Springstead was going to
10 address the 5K --

11 THE COURT: All right.

12 MR. SATAWA: -- if you want us to do that. He can
13 speak first.

14 THE COURT: Either order is fine to me. You decide
15 what you like to do first.

16 MR. SATAWA: Your Honor, if it please this Court,
17 the -- it's so often focused when we get to sentencing on the
18 conduct -- and of course, the nine months of Mr. Garbin's life
19 that ended in October of 2020 is mandated on this Court under
20 3553's nature and characteristics of the offense to be taken
21 into account by Your Honor in fashioning the sentence, and that
22 conduct has disturbing facts and allegations as this Court well
23 knows.

24 The presentation of the Defense, Your Honor, is to ask
25 this Court instead of just focusing on this, which I know this

1 Court will not do, to look at the 24 years of Mr. Garbin's life
2 prior to the beginning of the 2020 calendar year and as well as
3 the 10 months that Mr. Garbin has gone through since being
4 arrested for this offense.

5 Your Honor, the focus of the Defense presentation is
6 in an effort to show under 3553 not just the character and
7 history and characteristics of Mr. Garbin, but to address those
8 other factors as well: Deterrence, punishment, et cetera. And
9 the question is how does this society react to a person who not
10 only commits this offense but the way the person reacts to it
11 following the offense becomes a critically important question
12 to answer as relates to the 3553 factors.

13 I would submit, Your Honor, that Dr. Abramsky and
14 Parents for Peace do an excellent job of addressing Ty Garbin's
15 personal background that leads to his maturation into an adult.
16 I think it's important to note that Ty Garbin overcame
17 significant abuse in his own home, physical, psychological,
18 emotional and mental abuse by his own biological father that he
19 witnessed not just on himself but on his sisters, his younger
20 sisters, his two younger sisters and his mother. He overcame
21 that, went to trade school, became a certified mechanic, and
22 was thriving as a very, very young man in his early 20's.

23 Along comes COVID. He is cut back on hours and he is
24 psychologically predisposed to finding himself in a position of
25 becoming swept up in a group such as that charged in the

1 current indictment.

2 Mr. Garbin does not offer this as an excuse, Your
3 Honor. Mr. Garbin offers this because as Dr. Abramsky and
4 Parents for Peace do a far better job of explaining the unique
5 psychological background. Unique to Mr. Garbin as well as
6 unique to radicalization, radical groups such as that which was
7 charged in this indictment.

8 Mr. Garbin does not excuse or justify his actions in
9 this case. I think the comments found in the presentence
10 report, as well as the comments from Parents for Peace,
11 Dr. Abramsky, and his family, all scream that he does not do
12 that. In fact, Your Honor, the second part of my presentation,
13 the time after being arrested, is what truly in the minds of
14 the Defense sets this case apart.

15 Mr. Garbin was arrested. I think the Government even
16 references in its sentencing memorandum, frequently the
17 Government will say, the Defense will say, well, we can't
18 analyze the case and let you know whether or client is
19 interested in pleading guilty or cooperating until we have a
20 chance to review Rule 16 discovery, and as the Government sort
21 of rhetorically asks, well, you know, ask your client. He
22 knows what he did. Does he need Rule 16 discovery? He knows
23 what he did. Did he commit the crime and is he willing to
24 accept responsibility?

25 Ty Garbin didn't just do that, Your Honor. Ty Garbin,

1 less than 60 days after the conclusion of his preliminary
2 examination, as pointed out by the Government, was standing in
3 front of this Court pleading guilty and had agreed -- he may
4 not have pled guilty at that point, Your Honor, but he had
5 agreed to plead guilty and cooperate.

6 He has an uber-acceptance of responsibility. He made
7 these decisions -- when Mr. Springstead and I were still going
8 over initial discovery and analysis of the case issues, he made
9 this decision prior to the Government satisfying its Rule 16
10 discovery obligation. He did that because he came to us and
11 said, what I did was wrong and I have to correct it, and he
12 did. He agreed to give the Government proffers, which he has
13 done at least three times. He has agreed to testify, which he
14 has done at least twice.

15 The Government does an excellent job of filling in the
16 blanks in terms of the value of that assistance. And he did
17 that again, Your Honor, before the issuance of Rule 16
18 discovery. And I think it's important to note that Ty Garbin
19 testified in front of the grand jury in support of the very
20 indictment that got him indicted. He has fully, completely and
21 universally accepted responsibility for what he did. He is
22 truly, genuinely, and sincerely sorry. He is not just
23 committed to himself, to make up for what he did to himself or
24 to his family, but to others as reflected by what Parents for
25 Peace has said both in their written report and in the

1 mitigation video presented by the defense, which is to say, Ty
2 Garbin is 100 percent committed to trying to help others from
3 going down the path he found himself going down.

4 When Your Honor looks at not just that nine-month
5 period during the commission of the offense, but his background
6 beforehand and his actions after, we would submit under Rule
7 3553 -- I'm sorry, not rule. Under USC 3553(a), Your Honor --
8 and I apologize -- that these factors create a situation where
9 a sentence that is sufficient and not greater than necessary --
10 and I will leave the comments as to why this as to
11 Mr. Springstead. As I said, Your Honor, we respect the
12 Government's recommendation of a nine-year sentence at the
13 bottom of the amended guideline range after the departure
14 motion. The Defense would respectfully request that a sentence
15 that is sufficient but not greater than necessary for all of
16 these reasons, as well as the reasons contained in all of the
17 filings Dr. Abramsky, Parents for Peace, the support letters
18 and the video, that the sentence that is sufficient but not
19 greater than necessary is six years, 72 months. Thank you.

20 THE COURT: All right. Thank you, Mr. Satawa. And
21 we'll go to Mr. Springstead.

22 MR. SPRINGSTEAD: Thank you, Your Honor.

23 As Mr. Satawa already indicated, the Government has
24 done a good job of delineating exactly what Ty has done, the
25 dangers that he has posed to himself, and not surprisingly

1 they've recommended a four-level downward departure based
2 primarily on his testimony before the grand jury. And of
3 course, that's all in a framework of trying to come up with a
4 scale that's uniform for the district so there is not anomalous
5 departures depending on which AUSA or Defendant is on the case,
6 and so that kind of quantitative effort I totally understand
7 and I think that their four-level request is reasonable.

8 The only exception that I would take with that are
9 three points. No. 1, there is a qualitative difference in Ty's
10 cooperation than any of your routine run-of-the-mill testimony
11 before the grand jury. This is a case of national interest.
12 Of course, it's even more the State of Michigan is all very
13 interested in this case and what happens to these people who
14 posed a threat to the Governor. And Ty so far is the only
15 person to come forward, plead guilty, and cooperate. He is
16 there telling the insider account of what happened during this
17 conspiracy at times that weren't covered by cooperating
18 witnesses, recordings or undercover recordings, and I don't
19 think that that cooperation can be understated in a case like
20 this. He is going to be a star witness. He by all accounts
21 has been truthful, honest, and totally cooperative with the
22 Government. So I think that there is a qualitative difference
23 between their quantitative analysis that they typically use.

24 Second, I am not sure that the four-level departure
25 incorporates any type of danger analysis, and 5K does list that

1 as one of the factors, the danger that one has placed themself
2 in through cooperation, including his family.

3 Of course, Ty has, as the Government said, put a
4 target on his back by cooperating, particularly against an
5 extremist group and all of the adherents out there that may
6 want to make a name for themselves or truly object to him
7 working with the Government and telling the Government actually
8 what happened.

9 So I don't think that the Government's motion takes
10 that into account. I think if there was -- as I said in my
11 motion, if this were a white collar case with no danger to it
12 and the person testified in the grand jury, I would fully
13 expect that they would move for the same exact level departure.

14 And then lastly, the Government -- their quantitative
15 analysis rates the point system based on how they rank the
16 importance of their cooperation, which, you know, that's their
17 purview, but they happen to rate trial testimony as the highest
18 level of cooperation that someone can get, and of course, we
19 anticipate and the Government anticipates that Ty is going to
20 testify at trial.

21 That being the case, that's not -- that's not a
22 guarantee that he is actually going to get that opportunity to
23 testify at trial. He may very well -- at the end of the day
24 all the Defendants might plead or there might be something else
25 that happens where he is not presented with that opportunity to

1 testify at trial, and that cooperation, if he induces them to
2 plead, would be just as valuable as if they -- as if he had
3 testified at trial except he'd save them a tremendous amount of
4 resources and time in his cooperation.

5 So for those reasons, Your Honor, we're moving for an
6 additional departure under 5K that would take Ty down to, in
7 combination with the variance motion, to the six years that
8 Mr. Satawa requested.

9 THE COURT: All right. Thank you, Mr. Springstead.

10 And Mr. Garbin, you have the privilege of speaking,
11 too. You don't have to. It's an opportunity, not an
12 obligation. I have certainly read the materials that your
13 lawyers sent in from you. I heard from you on the video as
14 well. But if there is something you want to say here in the
15 sentencing process directly to me, please do. And I'll bet
16 your lawyer can help you get that microphone close so that you
17 don't have to move from your seat. You can just stay right
18 there and I'll be glad to listen. Go ahead.

19 THE DEFENDANT: Your Honor, first I would like to take
20 this opportunity to apologize to Governor Gretchen Whitmer and
21 her family. I have had a lot of time to reflect on my actions,
22 and I never realized what my actions would have caused to her,
23 but also her family. I can't even begin to imagine the amount
24 of stress and fear her family members felt because of my
25 actions, and for that I am truly sorry.

1 I'd also like to take this opportunity to apologize to
2 my family and friends, Your Honor. I never took into
3 consideration the emotional effect that my actions would take
4 on them as well, and for that I was truly selfish to not take
5 into consideration my family members that have meant so much to
6 me.

7 Going forward, Your Honor, I would like to continue to
8 work with Parents for Peace, not just to deradicalize myself
9 and build myself into a better person, but to help others from
10 becoming radicalized and help them from making the decisions
11 that I have made and bring some change and some good to the
12 environment. And that's all I have, Your Honor.

13 THE COURT: All right. Thank you.

14 We can go to the Government, Mr. Kessler.

15 MR. KESSLER: Thank you, Your Honor.

16 I'll just begin by addressing the 5K motion, and I'll
17 just phrase this in terms of the five characteristics that §
18 5K1.1 lays out. First as to the significance of the
19 cooperation. It's hard to over state how significant
20 Mr. Garbin's cooperation was here. He filled in a lot of gaps
21 for us.

22 As the Court can imagine there is a lot of recordings
23 out there of things that confidential informants or undercover
24 agents were able to record, and there were a lot of
25 considerations and things that happened that don't get captured

1 on a tape device, and Mr. Garbin was there for a lot of those
2 and was able to fill in those gaps, for example. Times where
3 he talked with other Defendants where no undercover was there.

4 We also -- we had a lot of evidence of intent that was
5 circumstantial evidence but having Mr. Garbin come in and tell
6 the insider's version of the story has been critical. Probably
7 more than anything else having somebody who was part of this
8 agreement say, this wasn't just big talk. We really meant to
9 do it is a huge thing and it's going to be important to the
10 jury when he testifies.

11 As far as the truthfulness of the information he's
12 given us, as I mention in our sentencing memo it's all been
13 corroborated by external evidence. And I noticed this in
14 questioning him during his testimony that he never really
15 minimized his conduct at all, and it's one of the reasons that
16 kind of thing is admissible as an exception to the hearsay rule
17 is that admissions against interest tend to be correct. He
18 didn't hold back. He would come right out and say, we planned
19 to do this and I was knowingly a part of it.

20 As far as the nature and extent of the cooperation he
21 has given us, I won't belabor the point. Mr. Satawa made it.
22 He's testified twice. He's given us multiple debriefings and
23 he's sat for hours answering all of our questions.

24 As far as the risk, I would just -- I think this is a
25 good time to just address what Mr. Springstead was saying.

1 He's correct that Mr. Garbin has put a target on his back, not
2 only retaliation from the other defendants, but potentially
3 their ideological sympathizers in prison or people who want to
4 be famous for, you know, taking on somebody who is -- was high
5 profile in a national case. I do think, for what it's worth,
6 that this is not necessarily the time to fully reward that. As
7 Mr. Springstead said, he's going to be a star witness we
8 assume. You know, we fully expect him to testify at the trial.
9 I don't think it's realistic that all of them are going to
10 plead, but even if they did, Rule 35 would allow us to address
11 that then. He is not really facing that much danger right now
12 prior to trial because he has been segregated in a different
13 place than the rest of the Defendants. I think where the
14 danger really comes in is when he gets designated to a Bureau
15 of Prisons facility and I think that would be the time we do
16 anticipate if he testifies like he has been filing a Rule 35
17 motion and we could address it then.

18 And then finally, as far as the timeliness of his
19 assistance, as Defense counsel have pointed out it was before
20 the indictment, before discovery, and it did allow us to
21 proceed to the grand jury to obtain this indictment with
22 confidence, and he also gave us information that we needed to
23 file a superseding indictment with even more serious charges
24 early on in the process so we weren't having to push back the
25 trial date.

1 As far as the 3553 -- did you want to hear anything
2 else about 5K, Your Honor?

3 THE COURT: Anything you have, but I don't have any
4 other questions.

5 MR. KESSLER: That's all, Your Honor.

6 THE COURT: Thank you.

7 MR. KESSLER: Thank you.

8 As far as the sentencing overall and the 3553 factors,
9 I agree the Court does need to consider both the crime and the
10 offender, and we think on the basis of the crime itself a
11 guideline sentence is appropriate. And on the basis of some of
12 the mitigating factors about the Defendant, we think a low end
13 sentence within that guideline range is appropriate as well.

14 I think three of the factors are probably the most
15 important. First, the characteristics of the offender. I
16 won't belabor this either because Defense counsel did an
17 eloquent job of doing it and I thought their video was also
18 pretty moving in that sense. One thing I'd note is the fact
19 that he has no criminal history. It's great. I think we're
20 going to see that more and more, though, with people who are
21 involved in these militia extremist type of cases because
22 otherwise they couldn't get guns. But I would agree with
23 Defense counsel that --

24 THE COURT: They couldn't legally get guns.

25 MR. KESSLER: Not legally. That's right. You know, I

1 would agree with Defense counsel that this is not just a case
2 of somebody who doesn't have -- has old convictions that don't
3 score or something like that. He has never been in trouble
4 before and that's different.

5 It did make me wonder when you see this, why would a
6 productive citizen with a good job like being an aircraft
7 mechanic who is otherwise law abiding get involved in something
8 like this? And there is just a huge system of disinformation
9 swirling around out there, and I understand their point that
10 people sometimes feel like they have a lack of control.
11 Anybody who worked for the Government when we stopped getting
12 paychecks for no reason or anyone who has ever worked in a
13 factory and been laid off through no fault of their own
14 understands that frustration and wanting to do something to
15 take some control over it. I would distinguish him from some
16 other people involved in this conspiracy because I think there
17 are purveyors of that disinformation and there are consumers.
18 I would put Ty Garbin more on the consumer camp as opposed to
19 someone like Mr. Croft who was actively selling an
20 antigovernment ideology to everybody else.

21 As far as the seriousness of the offense, that's hard
22 to overstate here. The underlying object of the conspiracy to
23 kidnap the sitting Governor of a state is about as serious as
24 it can possibly get. And it's not just a thought crime here.
25 I know there is, you know, a temptation to look at something

1 like a conspiracy that's an inchoate defense as a thought crime
2 where you're just talking about it, thinking about doing it,
3 but they weren't just sitting around talking about it. And I
4 know some of the other Defendants that filed motions that
5 suggest that what they were up to was protected by the First
6 Amendment, for example. But they weren't just sitting around
7 talking about doing it. They were practicing with
8 semiautomatic assault weapons. They made real bombs that
9 exploded, and they were doing both daytime and nighttime
10 surveillances of the Governor's house.

11 And I think we need to -- just to see how serious it
12 is you need to take the Governor's position, her elected
13 position out of the equation for a moment and just imagine
14 ourselves, anyone in here or someone we love, that they are
15 sitting at home and somebody who has it out for them literally
16 has -- is training with guns and explosives and is sitting
17 outside their house in the middle of the night having driven
18 across the country to do it, just how scary that is that people
19 would go that far and how many lines that crosses.

20 One of the things I pointed out in the sentencing memo
21 and I'd just like to emphasize this is why I cited that Supreme
22 Court case, the Callanan case, is just how dangerous this kind
23 of a conspiracy can be, and it's not just because they might
24 succeed in kidnapping the Governor. It's because of all the
25 other bad things that could happen in a case like this. When

1 you get a bunch of people like this together who might not
2 otherwise be that extreme but for the fact that they were
3 altogether, egging each on, whipping each other up and coming
4 up with crazy ideas.

5 And those ideas kept changing. As the Court is going
6 to hear and has seen from the PSR, and you are going to see in
7 the trial, they started out with ideas like raiding the State
8 Capitol, and then when they decided that was too hard to do
9 they shifted and it was maybe we'll take Governor Whitmer from
10 the official summer residence on Mackinaw Island, and then they
11 changed it to her house, the one that they were actually casing
12 at night.

13 And they kept changing that. And at any time there
14 was the danger that somebody would see an opportunity to do
15 something crazy and they'd all whip each other up into a frenzy
16 and go do it, or they might react to something they didn't
17 anticipate. For example, one of the things the Court will see
18 at the trial is a video of Adam Fox sitting in the Vac Shack,
19 the place where he worked at night, and police were there on
20 South Division for some unrelated reason, and there is actually
21 a video of it, and he is sitting in there telling the rest of
22 them, they are here for me. They know about it basically.
23 They are here for me, and I have my AR-15 and I am ready to
24 start shooting. Had nothing to do with him, but that just
25 gives you an idea of how serious it is when these people are

1 convinced that the Government is coming for them and that they
2 have to act.

3 As I also mentioned, you know, this could have
4 happened on any other number of occasions when they were
5 driving around with bomb components or illegal weapons. Some
6 poor unsuspecting deputy sheriff could have pulled them over
7 for speeding and you could end up with that person getting
8 killed. All of those are things that are risks of this
9 conspiracy whether or not they ever could have pulled off the
10 actual kidnapping of the Governor.

11 Finally, I think -- and one of the most important
12 things that we need to look at here is deterrence. I am not
13 sure that specific deterrence is the biggest consideration in
14 this case. I think Ty Garbin probably has learned a lesson
15 from this, but general deterrence is critical in this kind of
16 case. You can't turn on the TV any night or read the newspaper
17 without seeing two or three more instances of people doing
18 stuff like this, militia involved type of people,
19 antigovernment extremists, and they are being whipped up by
20 people who are on television, they are on the Internet,
21 politicians, current and former, who want to whip up this kind
22 of sentiment for their own reasons, for their own profit. And
23 there are people who are going to be receptive to this message.

24 Now, I think there are people who are naturally
25 receptive to it, and you'll hear in the trial there are some

1 people who heard about all this who associated with them who at
2 some point pulled the plug and said, whoa, this is getting out
3 of hand, I am not going to jail over this, and left the
4 conspiracy.

5 Then there are people like Ty Garbin who by his own
6 admission as you saw in the video was on the bubble. Saw red
7 flags. Knew in his brain that what he was doing was wrong but
8 in his heart maybe just stuck around longer than he should
9 have. There are going to be people for whom the decision
10 whether to leave and say, I am not doing this, or stay in the
11 bubble is influenced by knowing what happens in a case like
12 this. And if they see that there are serious consequences for
13 doing something like conspiring to kidnap a Governor or in the
14 Washington case, you know, conspiring to try and overturn an
15 election, that may make a difference in their decision process.

16 So I think we need to send a general deterrent message
17 to everyone with this sentence that you need to think for
18 yourself. That's why I think given all those factors a
19 guideline sentence is appropriate, but because of Mr. Garbin's
20 individual circumstances I think a sentence at the low end is
21 appropriate.

22 THE COURT: All right. Thank you.

23 Is anybody planning to speak on behalf of the victim?
24 I have read the impact statement in the PSR, but of course,
25 somebody would have an opportunity to speak if they wanted to.

1 MR. KESSLER: Not that we have been made aware of,
2 Your Honor.

3 THE COURT: All right. Anything else from the Defense
4 perspective?

5 MR. SPRINGSTEAD: No, Your Honor. Thank you.

6 THE COURT: Okay. And speaking again of the victim, I
7 didn't see a request for restitution. It's a mandatory
8 restitution offense but there is no request, is that right?

9 MR. KESSLER: That's correct.

10 THE COURT: Thank you to all the participants here
11 today, the presentence officer and the lawyers who put together
12 really a lot of materials, and I think today's presentation
13 highlighted the key nuggets on both sides which I would expect
14 from good lawyers, and I am glad you gave it to me in advance
15 so I had time to think and reflect on it because every
16 sentencing is difficult and this one has its own difficulties.

17 It's a fairly easy one to start with because we always
18 start with guidelines and everybody agrees in this case on what
19 the guidelines are. After you apply acceptance of
20 responsibility credit the guidelines are 168 to 210 months
21 based on a level of offense 35 and a criminal history category
22 I. But then the question is what's sufficient but not greater
23 than necessary to achieve the overall purposes of sentencing,
24 including all the things the lawyers have talked about and all
25 the things they have written about: The need for public

1 deterrence like we just heard from the Government, specific
2 deterrence that may or may not be necessary -- both sides have
3 addressed that in this case -- the need for promoting
4 rehabilitative opportunities to reflect the seriousness of what
5 did happen here, and put all of that in the mix.

6 The first place to start is with the Government's
7 motion for departure under 5K. I recognize the basis for
8 departure and it's well supported not just from what the
9 parties have talked about here but from the written materials.
10 I do intend to grant that and the four levels that the
11 Government recommends as a reflection of the value of the
12 cooperation at this stage of the case. Bringing Mr. Garbin
13 four levels down on the chart would suggest a guideline range
14 of 108 to 135 months, which is where the Government says I
15 should stay, albeit at the low end.

16 The Defense position is that either by giving more
17 credit for that 5K or some combination of variance factors, I
18 should go further down well below the guidelines in their view
19 from the written materials to 72 months specifically today that
20 we hear from the podium, and the supporting letter that they
21 submitted and relied upon from the Parents for Peace calls for
22 a minimal custodial sentence.

23 In my mind a minimal custodial sentence is not
24 appropriate here considering the seriousness of the offense and
25 the need for public deterrence, but I do agree that there are

1 factors that call for some additional variance below the bottom
2 of the guideline range, and in addition to the four-level 5K
3 that the Government filed. And I want to talk about that and
4 tell the parties why I intend a custodial sentence in this case
5 of 75 months, which is about another four levels down.

6 Let me start with the seriousness of the offense and
7 the need for public deterrence, because those are, I think, the
8 factors that most strongly augur against variance.

9 This was a plot to kidnap somebody, and I think any
10 plot to kidnap, no matter who the victim is, is frightening not
11 just to the intended victim but to that person's family,
12 associates, and of course, there is danger inherent in any kind
13 of a plot like that no matter how far along the group gets in
14 actually making it happen. And one of the statements that the
15 Governor makes in her victim impact statement, which is part of
16 the presentence report, highlights that, though she doesn't
17 dwell on it, but it's, of course, a factor.

18 When the target, though, is a sitting Governor, and
19 the motive is policy disagreement with the Governor's handling
20 of a public emergency crisis, I think the seriousness is even
21 worse because it really goes to the heart of what we all agree
22 to do together in a democratic republic. Fierce differences of
23 opinion are nothing new. They have been with us from the
24 foundation of the republic. Of course, lawyers like and recall
25 the famous phrase of Oliver Wendell Holmes back in the 1905

1 dissent in Lochner. The constitution is made of people of
2 fundamentally different views.

3 The key, of course, is that constitution is designed
4 to ensure that we work out our fundamentally different views
5 peacefully, not at the point of a gun, not with some other
6 blunt force threat like a kidnapping conspiracy. Instead, we
7 are going to use those constitutional rights we all have to
8 speak, to assemble, to petition, to demonstrate, complain
9 loudly but peacefully, and ultimately to vote. And we actually
10 saw that path followed by some citizens who didn't like the way
11 Governor Whitmer handled things either, and most notably the
12 ballot initiative that succeeded in repealing some of the
13 statutes on which she based her emergency powers.

14 That's the pathway that in a democratic republic we
15 vow to protect and use when we get spirited disagreements about
16 the way we ought to handle things. And I think Governor
17 Whitmer's impact statement captured this, too, and I just want
18 to read a short part of it. It's not something I need to read
19 in its entirety, but this, I think, captures exactly the point.
20 She says, "Our political system requires participation,
21 responsibility, respect for each other and compromise.
22 Violence and threats have no place in our politics. Violence
23 harms every one of us and endangers our democracy."

24 And that is, I think, absolutely right. I think she
25 has captured it perfectly. And in my mind, after reviewing the

1 record in this case, including the facts, the very specific
2 facts that Mr. Garbin embraced in the plea agreement, I don't
3 think there is any doubt that he crossed the line. He joined a
4 dangerous conspiracy to kidnap the Governor and he did so of
5 his own free will, not because Government agents led him down a
6 path that he was unwilling to travel on his own. On this
7 record I think there is no doubt about that.

8 So that certainly needs to be reflected in the Court's
9 sentence, and it's why I don't think a minimal custodial
10 sentence is appropriate, but I don't consider 75 months minimal
11 by any stretch of the imagination, though it is below
12 guidelines.

13 And that's really where I want to go next, because
14 individual matters -- individuals matter, too, and I think all
15 sides, including the Government, recognized that. And I
16 personally don't think specific deterrence for Mr. Garbin is
17 really needed, at least from what I can see on this record. He
18 has changed his behavior for sure, but I think he has changed
19 his heart and mind, too, and I think he is an excellent
20 prospect to walk law-abiding paths once he has finished paying
21 for these very serious mistakes.

22 And I think another person who recognizes that
23 individuals matter, too, is, again, the victim, Governor
24 Whitmer, who points this out in her victim impact statement.
25 She says, "There is room for grace and rehabilitation for those

1 who recognized the anger that has been unleashed and assisting
2 in unearthing the hate that has taken root in our society.
3 This will help reestablish the ideals and aspirations that made
4 our nation a beacon of possibility and opportunity to the rest
5 of the world." And I agree with that, too, and I think this
6 Defendant, Mr. Garbin, is one of the people who should benefit
7 from that sentiment in a tangible way in the form of a variance
8 that I am intending.

9 We've heard already from both sides. He has zero
10 prior issues with law enforcement in the first 24 years of his
11 life. He is not just category I criminal history. It's not
12 just zero points. It's zero engagement with law enforcement.
13 And the Defense brief I think cites some statistical analysis
14 that suggest that bodes well for success, but I do think it's a
15 very strong and positive indicator of success going forward.

16 And he didn't just avoid problems with law enforcement
17 in the 24 years he has managed despite obstacles to achieve
18 many important things. He had some difficulty with traditional
19 learning, but nonetheless, you got through high school. He
20 then went onto earn certification as an aviation mechanic,
21 which is difficult in its own right, that led to a good,
22 strong, solidly middle class economic opportunity, and that was
23 great and probably one of the things that fueled his anger and
24 disappointment in the immediate aftermath of the lockdowns that
25 hit the aviation industry particularly hard.

1 But none of that is an excuse for the dark and the
2 unlawful turn he made in response, and in my mind standing
3 alone that wouldn't be a basis for variance either. At least
4 most of the people I sentence in this court have overcome and
5 faced some obstacles, some more severe than Mr. Garbin. Some
6 less. But the question to me at least in the most extreme of
7 cases is how they respond to all of that, their behavior, and
8 how it fits in the overall mix of other factors, not the mere
9 fact that they had difficulties, which I'm sure he did.

10 And that's what's more impressive to me here, not just
11 the words of Mr. Garbin that he is abandoning this path, but
12 the things he has done, concrete things he has done to
13 demonstrate to me that he means it. And I want to highlight a
14 couple of those, not that we haven't heard about them. We have
15 already, but I want to highlight the ones that are significant
16 to me.

17 First, he took full responsibility very early in this
18 case to say, I did wrong, I know I did wrong, and I am not
19 going to run away from the consequences. I think Mr. Satawa
20 was right. I think it was within the first 60 days of the
21 filing of the complaint and the initial arrest. It was, in any
22 event, before formal indictment, which is maybe not
23 unprecedented in my 14 years but pretty unusual and certainly
24 unprecedented in a case of this magnitude. And I think that
25 reflects not just a desire and hope that he would get some kind

1 of credit for it, but a reflection that once he stepped outside
2 of that bubble he put himself in and surrounded himself with
3 people that were not good for him, that facilitated and fueled
4 that kind of momentum that Mr. Kessler and the Supreme Court
5 cited back in the Callanan decision. Once he stepped outside
6 of that he could exhale and I think in a sense breathe his own
7 sigh of relief that he was now back in a land he recognized
8 with people and his family that he recognized who are socially
9 responsible, and he could take the first step, the first key
10 step, which is recognition and acceptance of that
11 responsibility, and I think he did it. But he went beyond
12 that.

13 Secondly, he went onto say I not only want to take
14 responsibility for myself, I want to undue, to the extent I
15 can, some of the harm I did. And he did this again early by
16 making a full accounting that we heard of from Mr. Kessler
17 today, from the Defense table, too, and that's more detailed in
18 the written materials because he wanted to try to do some of
19 those things that Gretchen Whitmer, Governor Whitmer in her
20 comments noted. If you help unearth this kind of thing as its
21 taking root that's going to help us reestablish the ideals and
22 aspirations that continue to attract the refugees of the world
23 to our shores. Because we don't solve our problems. We agree
24 to solve -- by brute force. We agree to solve our problems
25 without the butt of a gun, the point of a gun or other brute

1 force.

2 And once you make that statement and step forward in
3 the words of, I think, the lawyers in both writing and today,
4 you do put a target on your back, and Mr. Garbin has that. He
5 has certainly burned a bridge to that dark side. He is not
6 going back, at least not easily, and I think that augurs well.

7 And then the third thing that I don't see from
8 everybody but I see from Mr. Garbin, is the decision to reach
9 out to people who can help him, whether it's Parents for Peace
10 or other people who can help him understand and help his family
11 understand what led him into this darkness? And he did that
12 before I made him do it or anybody else made him do it. He did
13 it, I think, because he wanted to understand and he wanted
14 tools to make sure this never happened again. And I see that
15 in the materials that were submitted in advance that that kind
16 of help has taken root, I think, for Mr. Garbin, and I think we
17 are starting to see the fruit of that in his own life and
18 response.

19 And then the family letters, which, of course, are not
20 unusual. I think are in the same vein and worthy of a comment.
21 Of course, I get a lot of letters from family members at the
22 time of the sentencing of a loved one, but what strikes me
23 about these, these are from people who have uniformly lived
24 productive and law abiding lives themselves. They respect the
25 constitution and laws of the country, and in some cases they

1 fought in the armed forces to defend those values. And maybe
2 even more importantly, they make no excuses for what Mr. Garbin
3 did. They are not enablers. They are clear about that he did
4 wrong. They are sorry, sad and sometimes ashamed that he did
5 wrong, and they are not afraid to call it out. They love him
6 anyway and are committed to providing the support that he needs
7 to make sure they never go -- he never goes this route again.
8 And I think so often it's tempting for family members, despite
9 their best efforts, to enable the kind of wrongdoing that
10 landed the offender in front of me in the first place to try to
11 excuse or minimize it in some way, and this doesn't happen.

12 Neither did it happen from Parents for Peace or other
13 groups that are supporting Mr. Garbin with tangible efforts to
14 help, in their words, deradicalize in my words, help him
15 understand what happened and get back into the normal side of
16 the democratic republic. To have those forceful opinions,
17 whatever they may be, to advance them peacefully and lawfully
18 and to abandon and disown any effort to violently pursue those
19 ends.

20 So that's why from my perspective something more than
21 the Government's four-level 5K is needed to reflect that person
22 in those factors, but still a significant custodial term is
23 needed in order to demonstrate the seriousness of this to the
24 public, as well as to Mr. Garbin, though I think he already
25 knows it, and to deter future conduct from people who might be

1 similarly inclined.

2 I certainly am going to recommend substance abuse
3 assessment and treatment. We didn't really talk about that
4 much, but there is reference in the PSR and some of the
5 briefing to suggest that Mr. Garbin would benefit from that.
6 And of course educational and vocational opportunities for
7 Mr. Garbin would be welcome and be useful. So I'll recommend
8 those things as well.

9 Supervision needs to follow. I intend a period of
10 three years of supervision. The normal mandatory terms will
11 apply and will include cooperation in the collection of DNA and
12 drug testing.

13 Standard conditions also apply, which means no
14 firearms or other destructive devices or dangerous weapons,
15 among other things.

16 And then the special conditions I intend are as
17 follows. First, Mr. Garbin needs to provide the probation
18 officer with access to requested financial information. Two,
19 he needs to participate in a program of substance abuse
20 assessment and treatment paying a portion of the cost as he is
21 determined able. Three, to use only those computers or other
22 Internet capable devices that are approved in advance by the
23 probation officer. And related, four, needs to provide the
24 probation officer with user names, e-mail addresses, passwords,
25 social media accounts, any form of ID he uses to create an

1 account accessible on the Internet. And those two conditions
2 are because the pathway here of trouble for Mr. Garbin was the
3 social media Internet pathway, and we need a chance, an
4 opportunity to monitor that.

5 And then fifth and the same vein, Mr. Garbin needs to
6 submit to the search protocol of the probation office
7 permitting search of vehicle, papers, computers and the like on
8 reasonable suspicion. And then finally, he needs to
9 participate in the computer monitoring protocol of the
10 probation office during the term of supervision.

11 From a financial point of view, the court intends the
12 special assessment of \$100. I don't intend a guideline fine.
13 The guideline fine is 40,000 to 250,000 dollars, but there is
14 no way from my review the finances of Mr. Garbin that he could
15 afford anything like that. So I intend a below guideline fine,
16 \$2,500, which will be providing some accountability financially
17 speaking during the Bureau of Prisons stay. The minimum
18 quarterly installment in the Bureau of Prisons' IFRP program is
19 \$25 quarterly. The minimum monthly installment is \$20
20 otherwise while in custody, and during supervision any balance
21 remaining I intend to be paid in minimum monthly installments
22 of \$50.

23 There would normally be a restitution award but there
24 is no request for one so I do not intend to award that. And
25 then the forfeiture will be as it's provided in the preliminary

1 order of forfeiture I referenced earlier, and we'll include
2 that in the final order as well.

3 So that's the overall intended sentences of the Court
4 and the reasons for it. We'll start with the Government for
5 legal objections?

6 MR. KESSLER: No legal objections, Your Honor.

7 THE COURT: Defense?

8 MR. SPRINGSTEAD: No legal objections, Your Honor.

9 THE COURT: Okay. All right. I am going to go ahead
10 and impose that as the sentence of the Court, then, Mr. Garbin.
11 From a custodial term point of view, 75 months, supervision to
12 follow, three years, one hundred dollar special assessment, a
13 fine of the \$2500, and the forfeiture as described in that
14 preliminary forfeiture document, and no restitution since none
15 is requested.

16 So that's the sentence I am imposing now. I am going
17 to make it the written judgment of the Court. You have a
18 14-day window to appeal. You talk to your lawyers. If there
19 is something you want to appeal make sure they hear it so they
20 can put it on file. If you are at a point that you can't
21 afford retained counsel anymore and you continue on you can
22 still file papers with the Court, and if you qualify the Court
23 can appoint somebody to carry the case for you. Do you have
24 any questions about that?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Okay. Mr. Springstead?

2 MR. SPRINGSTEAD: Yes, Your Honor. We forgot to ask
3 if he could be placed near his family in Milan?

4 THE COURT: I don't have any problem with that. I
5 wondered if you were going to ask for that or if you had other
6 concerns for him, but I will certainly reflect that if that's
7 his desire.

8 Do you have any comment or objection?

9 MR. KESSLER: No, Your Honor.

10 THE COURT: I'll add that, then, as one of the
11 recommendations. Is there anything else today?

12 MR. KESSLER: Not from the Government today.

13 THE COURT: Anything else from the Defense?

14 MR. SATAWA: No, Your Honor. Thank you.

15 THE COURT: All right. Thank you.

16 THE CLERK: Court is adjourned.

17 (Proceeding concluded, 4:50 p.m.)

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REPORTER'S CERTIFICATE

I, Paul G. Brandell, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Paul G. Brandell

Paul G. Brandell, CSR-4552, RPR, CRR

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